

AMENDED IN SENATE MARCH 24, 2011

SENATE BILL

No. 266

Introduced by Senator Dutton

February 10, 2011

An act to amend, *repeal, and add* Section 44956 of, *and to add Section 44956.1 to*, the Education Code, relating to education employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 266, as amended, Dutton. Education employment: termination, reappointment, and opportunity for substitute service.

Existing law provides that, when employees are terminated pursuant to a reduction in workforce, a school district is required to terminate the employees in order of seniority. Existing law further provides those employees with preferred right to reappointment and opportunity for substitute service in order of seniority.

Existing law requires that, if a terminated employee who is offered the opportunity for substitute service serves for at least 21 out of 60 schooldays, the compensation received by the employee in that 60-day period be no less than the compensation the employee would receive if he or she were being reappointed.

This bill would *temporarily* delete the above-referenced requirement relating to compensation *for the period of January 1, 2012, to June 30, 2015, inclusive*.

The bill would also prohibit local educational agencies from creating a vacant position, as defined, and subsequently filling that position with a substitute employee, as defined.

The bill would make various technical and nonsubstantive clarifying changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*

3 *(a) Current statutory requirements regarding the placement*
4 *and pay of specified substitute teachers impose significant,*
5 *unnecessary costs on local educational agency budgets, forcing*
6 *local educational agencies to cut basic educational programs and*
7 *make staff reductions.*

8 *(b) It is essential that the state provide local educational*
9 *agencies with maximum local flexibility to set substitute teacher*
10 *pay rates that reflect locally determined priorities for ensuring*
11 *that essential pupil programs are maintained in the most effective*
12 *manner.*

13 *(c) To ensure local authority and flexibility to prioritize and*
14 *protect core pupil services and personnel essential to these*
15 *services, current statutory substitute teacher pay requirements*
16 *should be temporarily repealed through the 2014–15 fiscal year,*
17 *in alignment with other local flexibility afforded to local*
18 *educational agencies in accommodation of the current fiscal crisis.*

19 ~~SECTION 1.~~

20 *SEC. 2. Section 44956 of the Education Code is amended to*
21 *read:*

22 44956. A permanent employee whose services have been
23 terminated as provided in Section 44955 shall have the following
24 rights:

25 (a) For the period of 39 months from the date of the termination,
26 any employee who in the meantime has not attained ~~the age of 65~~
27 ~~years~~ 65 years of age shall have the preferred right to
28 reappointment, in the order of original employment as determined
29 by the governing board in accordance with Sections 44831 to
30 44855, inclusive, if the number of employees is increased or the
31 discontinued service is reestablished, with no requirements that
32 were not imposed upon other employees who continued in service;
33 provided, that no probationary or other employee with less seniority
34 shall be employed to render a service that the employee is
35 certificated and competent to render. However, prior to

1 reappointing any employee to teach a subject ~~which~~ *that* he or she
2 has not previously taught, and for which he or she does not have
3 a teaching credential or ~~which~~ *that* is not within the employee's
4 major area of postsecondary study or the equivalent thereof, the
5 governing board shall require the employee to pass a subject matter
6 competency test in the appropriate subject.

7 (b) The right to reappointment ~~pursuant to~~ *described in*
8 subdivision (a) may be waived by the employee, without prejudice,
9 for not more than one school year, unless the *governing* board
10 extends this right, but the waiver shall not deprive the employee
11 of his or her right to subsequent offers of reappointment.

12 (c) Notwithstanding subdivision (a), a school district may
13 deviate from reappointing a certificated employee in order of
14 seniority for either of the following reasons:

15 (1) The district demonstrates a specific need for personnel to
16 teach a specific course or course of study, or to provide services
17 authorized by a services credential with a specialization in either
18 pupil personnel services or health for a school nurse, and ~~that~~ the
19 employee has special training and experience necessary to teach
20 that course or course of study, or to provide those services, which
21 others with more seniority do not possess.

22 (2) For purposes of maintaining or achieving compliance with
23 constitutional requirements related to equal protection of the laws.

24 (d) For an employee who is reappointed, the period of his or
25 her absence shall be treated as a leave of absence and shall not be
26 considered as a break in the continuity of his or her service, he or
27 she shall retain the classification and order of employment he or
28 she had when his or her services were terminated, and credit for
29 prior service under any state or district retirement system shall not
30 be affected by the termination, but the period of his or her absence
31 shall not count as a part of the service required for retirement.

32 (e) During the period of an employee's preferred right to
33 reappointment, the employee, in the order of original employment,
34 shall be offered prior opportunity for substitute service during the
35 absence of any other employee who has been granted a leave of
36 absence or who is temporarily absent from duty; provided, that his
37 or her services may be terminated upon the return to duty of the
38 other employee and that the substitute service shall not affect the
39 retention of his or her previous classification and rights.

40 (~~g~~)

(f) (1) During the period of the employee's preferred right to reappointment, the governing board of the district, if it is also the governing board of one or more other districts, may assign the employee to service that he or she is certificated and competent to render, in one of the other districts. The compensation the employee receives, in the discretion of the governing board, may be the same as the employee would have received had he or she been serving in the district from which the employee's services were terminated. The employee's service in the other district or districts shall be counted toward the period required for both state and local retirement as though rendered in the district from which the employee's services were terminated. The employee shall not displace any other permanent employee in the other district or districts.

(2) It is the intent of this subdivision that the employees of a school district, the governing board of which is also the governing board of one or more other school districts, shall not be at a disadvantage as compared with employees of a unified school district.

~~(h)~~

(g) At any time prior to the completion of one year after the employee's return to service, the employee may continue or make up, with interest, his or her own contributions to any state or district retirement system for the period of his or her absence, but it shall not be obligatory on the state or district to match the contributions.

~~(i)~~

(h) If the employee becomes disabled or reaches retirement age at any time before his or her return to service, the employee shall receive, in any state or district retirement system of which the employee was a member, all benefits to which he or she would have been entitled if the disability or retirement occurred at the time of his or her termination of service, plus any benefits the employee may have qualified for thereafter, as though still employed.

(i) *This section shall become inoperative on July 1, 2015, and, as of January 1, 2016, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2016, deletes or extends the dates on which it becomes inoperative and is repealed.*

SEC. 3. *Section 44956 is added to the Education Code, to read:*

1 44956. A permanent employee whose services have been
2 terminated as provided in Section 44955 shall have the following
3 rights:

4 (a) For the period of 39 months from the date of the termination,
5 any employee who in the meantime has not attained 65 years of
6 age shall have the preferred right to reappointment, in the order
7 of original employment as determined by the governing board in
8 accordance with Sections 44831 to 44855, inclusive, if the number
9 of employees is increased or the discontinued service is
10 reestablished, with no requirements that were not imposed upon
11 other employees who continued in service; provided, that no
12 probationary or other employee with less seniority shall be
13 employed to render a service that the employee is certificated and
14 competent to render. However, prior to reappointing any employee
15 to teach a subject that he or she has not previously taught, and for
16 which he or she does not have a teaching credential or that is not
17 within the employee's major area of postsecondary study or the
18 equivalent thereof, the governing board shall require the employee
19 to pass a subject matter competency test in the appropriate subject.

20 (b) The right to reappointment described in subdivision (a) may
21 be waived by the employee, without prejudice, for not more than
22 one school year, unless the governing board extends this right,
23 but the waiver shall not deprive the employee of his or her right
24 to subsequent offers of reappointment.

25 (c) Notwithstanding subdivision (a), a school district may
26 deviate from reappointing a certificated employee in order of
27 seniority for either of the following reasons:

28 (1) The district demonstrates a specific need for personnel to
29 teach a specific course or course of study, or to provide services
30 authorized by a services credential with a specialization in either
31 pupil personnel services or health for a school nurse, and the
32 employee has special training and experience necessary to teach
33 that course or course of study, or to provide those services, which
34 others with more seniority do not possess.

35 (2) For purposes of maintaining or achieving compliance with
36 constitutional requirements related to equal protection of the laws.

37 (d) For an employee who is reappointed, the period of his or
38 her absence shall be treated as a leave of absence and shall not
39 be considered as a break in the continuity of his or her service, he
40 or she shall retain the classification and order of employment he

1 or she had when his or her services were terminated, and credit
2 for prior service under any state or district retirement system shall
3 not be affected by the termination, but the period of his or her
4 absence shall not count as a part of the service required for
5 retirement.

6 (e) During the period of an employee's preferred right to
7 reappointment, the employee, in the order of original employment,
8 shall be offered prior opportunity for substitute service during the
9 absence of any other employee who has been granted a leave of
10 absence or who is temporarily absent from duty; provided, that
11 his or her services may be terminated upon the return to duty of
12 the other employee and that the substitute service shall not affect
13 the retention of his or her previous classification and rights. If, in
14 any school year the employee serves as a substitute in any position
15 requiring certification for any 21 days or more within a period of
16 60 schooldays, the compensation the employee receives for
17 substitute service in that 60-day period, including his or her first
18 20 days of substitute service, shall be not less than the amount the
19 employee would receive if he or she were being reappointed.

20 (f) (1) During the period of the employee's preferred right to
21 reappointment, the governing board of the district, if it is also the
22 governing board of one or more other districts, may assign the
23 employee to service that he or she is certificated and competent
24 to render, in one of the other districts. The compensation the
25 employee receives, in the discretion of the governing board, may
26 be the same as the employee would have received had he or she
27 been serving in the district from which the employee's services
28 were terminated. The employee's service in the other district or
29 districts shall be counted toward the period required for both state
30 and local retirement as though rendered in the district from which
31 the employee's services were terminated. The employee shall not
32 displace any other permanent employee in the other district or
33 districts.

34 (2) It is the intent of this subdivision that the employees of a
35 school district, the governing board of which is also the governing
36 board of one or more other school districts, shall not be at a
37 disadvantage as compared with employees of a unified school
38 district.

39 (g) At any time prior to the completion of one year after the
40 employee's return to service, the employee may continue or make

1 *up, with interest, his or her own contributions to any state or*
2 *district retirement system for the period of his or her absence, but*
3 *it shall not be obligatory on the state or district to match the*
4 *contributions.*

5 *(h) If the employee becomes disabled or reaches retirement age*
6 *at any time before his or her return to service, the employee shall*
7 *receive, in any state or district retirement system of which the*
8 *employee was a member, all benefits to which he or she would*
9 *have been entitled if the disability or retirement occurred at the*
10 *time of his or her termination of service, plus any benefits the*
11 *employee may have qualified for thereafter, as though still*
12 *employed.*

13 *(i) This section shall become operative on July 1, 2015.*

14 *SEC. 4. Section 44956.1 is added to the Education Code, to*
15 *read:*

16 *44956.1. A local educational agency shall not create a vacant*
17 *position, as defined in Section 44920, and subsequently fill that*
18 *newly created vacant position with a substitute employee, as*
19 *defined in Section 44917.*